Calendar No. 281

98TH CONGRESS
1st Session

SENATE

REPORT
No. 98-176

MATAGORDA ISLAND EXCHANGE AGREEMENT

JULY 11, 1983.—Ordered to be printed

Mr. CHAFEE, from the Committee on Environment and Public Works, submitted the following

REPORT

[To accompany H.R. 1935]

The Committee on Environment and Public Works, to which was referred the Act (H.R. 1935) to ratify an exchange agreement concerning National Wildlife Refuge System lands located on Matagorda Island in Texas having considered the same, reports favorably thereon without amendment and recommends that the Act do pass.

PURPOSE OF THE LEGISLATION

The purpose of the legislation is to ratify an exchange agreement concerning National Wildlife Refuge System lands located on Matagorda Island in Texas.

LEGISLATIVE HISTORY

On March 7, 1983, Senators Bentsen and Tower introduced S. 696. An identical bill, H.R. 1935, was introduced in the House of Representatives on March 7 and was unanimously approved by the House on April 19, 1983. A hearing on the two bills was held before the Committee on Environment and Public Works on May 19, 1983.

GENERAL STATEMENT

Matagorda is a Texas barrier island of approximately 50,000 acres. From 1943 to 1971, approximately 19,000 acres were owned by the Army Corps of Engineers and used as an Air Force bombing range. Since 1971, the area has been managed as a unit of the Aransas National Wildlife Refuge through a Memorandum of Understanding (MOU) between the U.S. Fish and Wildlife Service and the Air Force. By virtue of the MOU, portions of the island receive the protections

11-006 O

BEST COPY AVAILABLE

S323-18

accorded a National Wildlife Refuge. The Federal lands, however, do not include the most important wildlife habitat on Matagorda Island. The most important habitat is found on the approximately 24,000 acres of land owned by the Texas General Land Office (GLO). The GLO lands contain most of the island's bayside wetlands, which are of critical importance to the endangered whooping crane, brown pelican, and many other wildlife species.

Texas has long been interested in acquiring the Federal portion of Matagorda, and on April 23, 1981, former Governor Clements wrote to Secretary of the Interior James Watt asking that the Federal holding be transferred to the State. The National Wildlife Refuge System Administration Act Amendments of 1976 generally prohibit the Secretary of the Interior from disposing of lands within the National Wildlife Reguge System. However, the proposal to turn the Federal lands on Matagorda over to Texas was based on the fact that these lands were brought into the Refuge System pursuant to the terms of a cooperative agreement. It was argued that should this agreement be terminated, the lands could then be removed from the Refuge System and given to the State.

Local and national conservation groups vigorously opposed the State request. Not only did they prefer that the Federal portion of Matagorda remain as primitive as possible, but for many years they had joined with the Federal Government in hoping that the state share of the Island could be acquired and included as part of the Aransas Refuge. This would provide integrated management of the publicly owned areas of the island and bring the premier State owned wildlife habitat under the protection of Federal statutes.

Considerable controversy ensued, providing a catalyst for interested parties, particularly the Federal Government, the State of Texas, and the National Audubon Society, to negotiate a compromise on the issue. On December 8, 1982, the Department of the Interior and the State of Texas signed a Memorandum of Agreement for the management of the Matagorda Island State Park and Wildlife Management Area as a unit of the National Wildlife Refuge Systems and for integrated management, by the State, of National Wildlife Refuge System lands and State lands on Matagorda Island. Thus, the Agreement is based on the exchange of interests in State and Federal lands on the Island. (The major documents of this Agreement are included in the Appendix to this report.)

The December 8, 1982, Memorandum of Agreement provides that: (1) The 19,000 acres of Federal land on Matagorda Island will remain under the primary jurisdiction of the U.S. Fish and Wildlife Service as a unit of the National Wildlife Refuge System; (2) the State-owned (GLO) wetlands and beach frontage are also brought into the National Refuge System by means of an easement; (3) the Texas Parks and Wildlife Department manages the entire public land entity pursuant to an Interior/Texas Cooperative Agreement which requires that management be in accord with the U.S. Fish and Wildlife Service's National Wildlife Refuge Manual and the Federal Code as it applies to the National Wildlife Refuge System; (4) the U.S. Fish and Wildlife Service retains authority to grant or deny applications for permits pertaining to land use and access to Federal lands on the Island. Ap-

plications affecting the Federal easement shall not be granted by Texas unless approved by the U.S. Fish and Wildlife Service Regional Director; (5) Texas submits annual operating plans for the U.S. Fish and Wildlife Service's approval; and (6) public and private organizations have the right to petition concerning management problems which, if not satisfactory resolved administratively, can be reviewed in court by citizen suits.

More specifically, under the Agreement:

1. Texas must not permit the building or use of any causeway, highway, bridge, ferry, public airport or similar mode of transportation which provides land vehicle or aircraft access to the Island.

2. Texas must not grant any permits, easements or rights-of-way for pipeline or any other nonwildlife or nonpark uses on the publicly owned lands on Matagorda Island without the approval of the U.S. Fish and Wildlife Service (with the exception of oil and gas leasing which will continue to be governed by existing law.)

3. Neither Texas nor the Federal Government may erect or permit the erection of any buildings or structures (other than those relating to oil, gas or other minerals) without the consent of the other and consistent with the terms of the Agreement.

4. Texas must not permit the drainage, by any means, of any wetlands, unless the five year plan provides for such changes in order to enhance wildlife habitat protection.

5. Texas must not conduct or authorize the conduct of any recreational activities which interfere with and are not compatible with the National Wildlife Refuge.

6. Texas must not manipulate the land and water or allow the manipulation of the land and water by others in any way that would diminish its value as wildlife habitat without the U.S. Fish and Wildlife Service's approval.

7. Texas must immediately halt all activities which the U.S. Fish and Wildlife Service finds incompatible with the refuge. If it does not immediately halt the activity, the U.S. Fish and Wildlife Service will reassert management authority sufficient to cure the incompatible activity.

8. Texas and the U.S. Fish and Wildlife Service will enter into a law enforcement Memorandum of Understanding.

The Memorandum of Agreement has been endorsed by the National Audubon Society, the National Wildlife Federation, and a number of other conservatian organizations. However, on December 23, 1982, a lawsuit entitled *Sierra Club* v. *Watt*, Civil Action No. 82–3638, was filed in the United States District Court for the District of Columbia challenging the Agreement.

This particular Agreement will substantially benefit migratory and endangered species of wildlife. It is further justified by the unique situation presented by the mosaic of Federal and State land ownership on Matagorda Island, and should not continue to be subjected to the uncertainties of litigation.

Enactment of H.R. 1935 will render the pending litigation concerning the Agreement moot. However, H.R. 1935 does not resolve

the general question of whether, absent congressional approval, the action of the Secretary in entering into an agreement such as this one would be in compliance with Federal law. The bill is intended to address the unique situation found on Matagorda Island and specifically provides that it shall not serve as a precedent for agreements involving other refuge lands.

Section-by-Section Analysis

This legislation consists of a single section which ratifies the Memorandum of Agreement between the United States Department of the Interior and the State of Texas concerning National Wildlife Refuge System lands on Matagorda Island in Texas.

Hearings

On May 19, 1983, the Subcommittee on Environmental Pollution held a hearing on S. 696 and H.R. 1935. Testimony was heard from the Deputy Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior and from representatives of the Fish and Wildlife Service, Texas General Land Office, and the Texas Parks and Wildlife Commission.

Rollcall Votes

Section 7(b) of rule XXVI of the Standing Rules of the Senate and the rules of the Committee on Environment and Public Works requires that any rollcall votes taken during consideration of this legislation be announced in this report.

There were no rollcall votes taken. The bill was ordered reported by voice vote.

Evaluation of Regulatory Impact

Section 11(b) of rule XXVI of the Standing Rules of the Senate requires evaluation of the regulatory impact of the reported bill.

It is not anticipated that this bill will impose any significant new regulatory burden.

Cost of Legislation

Section 403 of the Congressional Budget and Impoundment Control Act requires a statement of the cost of the reported bill prepared by the Congressional Budget Office be included in the report. That statement follows:

U.S. Congress,
Congressional Budget Office,
Washington, D.C., July 11, 1983.

Hon. Robert T. Stafford,
Chairman, Committee on Environment and Public Works,
U.S. Senate, Washington, D.C.

Dear Mr. Chairman: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed H.R. 1935, a bill to ratify an exchange agreement concerning National Wildlife Refuge System lands located on Matagorda Island in Texas,

as ordered reported by the Senate Committee on Environment and Public Works, June 23, 1983.

Based on this review, it is expected no significant additional cost to the federal, state or local governments would be incurred as a result of enactment of this bill.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

NANCY M. GORDON
(For Alice M. Rivlin, Director).

CHANGES IN EXISTING LAW

Section 12 of rule XXVI of the Standing Rules of the Senate requires publication of the changes made by the reported bill in existing law. The bill as reported would make no changes in existing law.

APPENDIX

MEMORANDUM OF AGREEMENT BETWEEN UNITED STATES DEPARTMENT OF THE INTERIOR AND STATE OF TEXAS FOR THE MANAGEMENT OF THE MATAGORDA ISLAND STATE PARK AND WILDLIFE MANAGEMENT AREA, A UNIT OF THE NATIONAL WILDLIFE REFUGE SYSTEM IN CALHOUN COUNTY, TEXAS

This Memorandum of Agreement (Agreement) is between the United States Department of the Interior (Interior), acting through the U.S. Fish and Wildlife Service (FWS), and the State of Texas (Texas), acting through the Governor, and the Texas Parks and Wildlife Department (TPWD) and the Texas General Land Office (GLO).

Whereas, it is the policy of Interior to recognize the vital role of the States in proper management and conservation of our national resources; and

Whereas, Interior and Texas recognize that Matagorda Island is:

A valuable and delicate State and national resource deserving of careful management and conservation; and

One of the few remaining barrier islands in the Nation which remain essentially in a natural state, and shall be preserved in an undeveloped state, except for any improvements necessary to administer the land as a refuge and wildlife management area and for park purposes; and

Of particular importance for wildlife, especially for the protection of endangered species such as the whooping crane; and

One of the most important waterfowl areas along the Texas gulf coast, and the North American Continent, especially during annual migration and wintering periods; and

A nationally, if not internationally, significant ecosystem that must be preserved; and

A significant recreational and historical area, both to the citizens of Texas and to the Nation; and

Whereas, Interior, by and through FWS, is the Federal agency responsible for carrying out this Nation's migratory bird and endangered species program responsibilities, including providing proper protection and sound integrated management with the State for said wildlife species utilizing Matagorda Island; and

Whereas, Interior, by and through the FWS, has since 1971 managed the 19,000± acres of Federal land on Matagorda Island as part of the Aransas National Wildlife Refuge; and

Whereas, Texas has demonstrated its ability to manage its fish and wildlife resources and maintain the delicate ecosystem of its gulf coast including State wetlands and Gulf lands on Matagorda Island; and

Whereas, GLO, the Texas agency which manages the Texas Coastal Public Lands, including the 24,893± acres of State wetlands and Gulf lands on Matagorda Island, has agreed to lease its land to TPWD to

enable TPWD to manage the lands as provided for in this Agreement; and

Whereas, TPWD is the Texas agency responsible for the management of wildlife in the State reservation, as well as for the administration of Texas laws relating to wildlife, fish, oysters and marine life; and

Whereas, Interior wishes to obtain a conservation easement on the 24,893± acres of State wetlands and Gulf lands on Matagorda Island to be managed as a unit of the National Wildlife Refuge System (NWRS) in exchange for a grant of easement to Texas on the 19,000± acres of Federal land; and

Whereas, Texas, by and through TPWD, desires to provide integrated management of all Federal and State lands on Matagorda Island, shown on the map, Exhibit "A" (attached hereto and incorporated by reference in this Agreement) as a park and wildlife management area, under an Agreement with Interior and lease from GLO; and

Whereas, Interior and Texas believe that the wildlife resources on Matagorda Island will benefit from integrated management of the Federal and State lands on Matagorda Island; and

Wheres, Interior and Texas agree there is need to define the respective rights and obligations of each in the integrated operation and maintenance of Matagorda Island; and

Whereas, this Agreement is authorized under the National Wildlife Refuge System Administration Act (16 U.S.C. 668dd–668ee), section 6(b) of the Endangered Species Act (16 U.S.C. 1535(b)), the Fish and Wildlife Coordination Act (16 U.S.C. 661–667c), the Fish and Wildlife Act of 1956 (16 U.S.C. 742a–742j); and as authorized in the Texas Parks and Wildlife Code, and Texas Natural Resources Code Chapter 33, *et seq.*

Now therefore Interior and Texas hereby agree that:

1. Texas shall, through TPWD, provide integrated management of all publicly-owned land on Matagorda Island, pursuant to this Agreement, the "Matagorda Island Conceptual Plan" (State conceptual plan, attached hereto as Exhibit "B" and incorporated by reference in this Agreement), as approved by Interior, and in accordance with annual operations plans approved by FWS and GLO, as a wildlife refuge, park and wildlife management area in the manner, and subject to the further terms and conditions, as hereinafter prescribed in this Agreement.

2. For the purposes of carrying out their respective obligations and responsibilities under this Agreement, Texas will be represented by the Executive Director, TPWD, and the Texas Land Commissioner, GLO; and Interior will be represented by the Regional Director, FWS, Albuquerque, New Mexico.

3. TPWD shall adopt the management principles, goals and objectives set forth in the NWRS Manual and managing all publicly-owned land on Matagorda Island. Where this Agreement is inconsistent with the NWRS Manual, this Agreement shall govern.

4. The 19,000± acres of Federal land on Matagorda Island managed by TPWD will remain under the primary jurisdiction of FWS as a unit of the NWRS. Primary jurisdiction of the 21,568± acres of

State wetlands and 3,325± acres of State Gulf lands will remain with Texas. The Federal conservation easement on the State lands shall be included in the NWRS.

5. TPWD, under the terms and conditions of this Agreement, will provide integrated management of Federal and State lands on Matagorda Island in accordance with the State conceptual plan and annual operations plans (as approved by FWS) by zone (Exhibit "A") as follows:

Zone A—To be administered as a wildlife management area, excluding camping but including hunting, fishing, and other compatible wildlife-oriented research and recreational uses, subject to restrictions in applicable Federal and State laws, rules, and regulations.

Zone B—To be administered as a wildlife conservation and park area, providing compatible public use opportunities, subject to restrictions in applicable Federal and State laws, rules, and regulations.

6. Except as otherwise provided in the easement from the State to the United States, Texas shall not use or permit the use, and shall take such measures as may be necessary to prevent the use or occupancy, of the publicly-owned portion of the island, for any purpose which is inconsistent or incompatible with the purposes herein specified and in its State conceptual plan or annual operations plans for the island. In additional, TPWD shall not authorize any use affecting the Federal lands or Federal conservation easement unless it is determined by FWS, during the annual review of the annual operations plan, to be compatible with the purposes for which the refuge lands were added to tl NWRS—to provide habitat for migratory birds, endangered species and other wildlife. TPWD, in managing the State lands specified in the Agreement, shall comply wtih this compatibility test, except for oil, gas, and mineral exploration and development which are valid existing rights held by third parties or part of the subsurface estate retained by GLO and exempt from refuge compatibility requirements. FWS Refuge System regulations regarding the administering of reserved and excepted mineral rights shall be applicable to the exercise of valid existing mineral rights.

7. Subject to valid existing rights, oil, gas, and other authorized mineral exploration and development will be permitted on the publicly-owned portion of Matagorda Island under applicable Federal and State laws, rules, and regulations necessary to assure protection of wildlife and other natural resources. The State environmental codes in the FWS approved Aransas National Wildlife Refuge Oil and Gas Plan (Exhibit C, attached hereto and incorporated by reference in this Agreement) shall be used as guidelines. Deviation from these guidelines must be recommended by TPWD and GLO and approved by the FWS Regional Director. Response from FWS shall be in writing within 30 days after receipt of such recommendations.

8. Texas shall refer to the FWS Regional Director all applications relative to permits, easements, rights-of-way for pipelines and all other proposed non-wildlife or non-park uses on or affecting the publicly-owned lands, except as provided in Paragraph 7 herein relating to oil and gas exploration and development. With such referral, Texas

shall indicate its recommendations as to the application, with a statement that such proposed uses will or will not interfere with the use of the lands for the purposes for which they are made available to the State. FWS retains the authority to grant or deny applications on Federal lands. Applications affecting the Federal easement shall not be granted by Texas unless approved by the FWS Regional Director. Upon receipt of such referral, FWS shall respond in writing within 30 days except for actions requiring preparation of an environmental impact statement. Texas is, however, authorized to issue special use permits, for such daily operational matters as grazing, seismic, etc., which are consistent with annual operations plans approved by FWS.

9. No causeway, highway, bridge, ferry, public airport, or similar mode of transportation providing land vehicle or aircraft access to the island will be permitted, except that TPWD, GLO, and FWS and their respective agents and assigns, may utilize all modes of transportation necessary for the proper administration of the island. No land vehicle or aircraft will be allowed on the publicly-owned portion of the island except as authorized for administration, management, enforcement, and maintenance of the land as Matagorda Island State Park and Wildlife Management Area, and as a unit of the NWRS.

10. TPWD will obtain use of all buildings, structures, and facilities located on the Federal land including the Port O'Connor dock annex (6.9 acres) and maintain those not disposed of as provided herein. FWS reserves the right to store refuge equipment, at a mutually-agreed site, and use all docks, roads, aircraft runways, and all other access facilities for administrative use in carrying out its Federal responsibilities. All buildings, utilities, and facilities not selected for use by TPWD or FWS will be removed from the site or disposed of as mutually agreeable in accordance with the General Services Administration's rules and regulations covering disposal of excess Federal property. TPWD and FWS, subject to each other's consent, will be permitted to construct, modify, or move any building, structure, or utility system to enable it to meet its intended use as authorized by this Agreement.

11. Grazing may be permitted by TPWD on Federal lands in accordance with the State conceptual plan, annual operations plans and the NWRS Manual. Grazing on State lands will be compatible with the purpose for which the Federal easement was added to the NWRS. TPWD will prescribe in its annual operations plan the conditions under which grazing may be permitted, including livestock type and number, distribution and duration of grazing, and conditions by which livestock numbers will be manipulated in response to changes in range conditions resulting from climatological or other phenomena. FWS and GLO will be responsible for the administration of grazing leases. TPWD will monitor the grazing program and identify adjustments in its annual operations plan required to protect the range and wildlife resources.

12. Nothing in this Agreement shall impair the ability of TPWD to permit hunting and fishing on State lands in accordance with good wildlife management practices and consistent with the Texas Parks and Wildlife Code. All hunting and fishing shall be managed to assure that these activities are not likely to jeopardize the continued existence of any federally listed endangered or threatened species.

13. All monies received from products of the land or other privileges granted on the 19,000± acres of Federal lands (subject to valid existing rights) in this Agreement, shall accrue to FWS for deposit into the National Wildlife Refuge Revenue Sharing Fund. All monies received from products of the land on the State lands (subject to valid existing rights) in this Agreement, shall accrue to GLO for deposit into the appropriate School Fund.

14. No admission fees of any kind shall be charged for entrance into the publicly-owned portion of the island. Fees may be charged to defray actual expenses for special programs and services including transportation to and from recreational areas, and rental of blinds and equipment; all fees so obtained may be retained by Texas.

15. For the 19,000± acres of Federal land on Matagorda Island, FWS will make payments to Calhoun County, Texas, in accordance with the Refuge Revenue Sharing Act (16 U.S.C. 715–s).

16. With respect to all of the publicly-owned lands on Matagorda Island, TPWD and FWS shall enter into a Law Enforcement Memorandum of Understanding as provided by section 3(b) of the Fish and Wildlife Improvement Act of 1978. Public Law 95–616 (16 U.S.C. 742 l(b)). TPWD shall assign full-time law enforcement personnel to administer the land subject to this Agreement, and FWS shall, subject to applicable laws and regulations, authorize TPWD law enforcement personnel to enforce Federal fish and wildlife laws.

17. TPWD shall submit to the Regional Director of FWS and the Commissioner of GLO for approval a 5-year master plan by October 1 of the beginning of each 5-year period and an annual operations plan no later than October 1 of each calendar year for the following year to describe its management activities on Matagorda Island. Each 5-year plan shall include a statement of management goals and priorities. Each annual plan shall include staffing levels to achieve these goals. No irreversible commitment of resources by TPWD shall occur before the initial 5-year plan is approved. These documents shall follow the format as required by the Federal Aid in Fish and Wildlife Restoration Program. Annual reports of activities for the preceding year will be submitted in compliance with the above cited Program. FWS and GLO shall make inspections of the area at such times as they elect to ensure that the State's operations are in keeping with master and annual plans.

18. If FWS believes or has reason to believe that TPWD has conducted or permitted an incompatible activity on the Federal lands or affecting the Federal easement. FWS will notify TPWD. TPWD shall immediately cease the activity pending appeal to the Secretary. If TPWD does not cease, FWS, pending the appeal, shall assume

management to the extent necessary to prevent the incompatible activity.

If FWS believes or has reason to believe that TPWD has violated any of the conditions set forth in the Agreement that do not constitute an incompatible activity, FWS shall notify TPWD. Such notice shall be in writing and shall set forth the alleged violation of the conditions of the said paragraph. A copy of the notice shall simultaneously be delivered to GLO. Upon receipt of said notice, TPWD shall immediately acknowledge receipt of said notice and respond in writing to the allegations of said notice within thirty (30) days. If TPWD agrees that corrective action is necessary, FWS, GLO, and TPWD shall mutually agree on the number of days and conditions necessary for the correction of said violation or violations. If TPWD does not agree that a violation has occurred and a settlement cannot be reached, TPWD may appeal to the Secretary who will make a final decision after notice and opportunity for a hearing pursuant to the Administrative Procedure Act.

If, after appeal, any violation is found and if said violation is not corrected within sixty (60) days after the final decision on appeal is rendered, or if other appropriate legal proceedings are not initiated within such time period, TPWD shall forfeit any interests and this Agreement shall terminate.

19. Upon receipt of a valid petition from any public or private organization or individual alleging that Texas is using or permitting use of the Federal lands or affecting the Federal easement covered by this Agreement in a manner that violates the terms of this Agreement, FWS shall, within 30 days, investigate the allegation and make a determination whether, pursuant to paragraph 18 of this Agreement, it shall notify Texas of the alleged violation. If FWS determines the petition to be invalid or does not otherwise pursue the petition, petitioner may appeal to the Secretary of the Interior who shall make a final decision after providing opportunity to the petitioner and TPWD to submit comments.

20. In the event this Agreement is terminated, Texas shall have ninety (90) days from the effective date of termination to remove any structure placed on the area by the State and to restore the land affected by such removal as nearly as possible to its original condition considering normal wear and tear. If this Agreement is terminated, Interior will immediately assume direct management of the Federal lands on the island, including any permits or similar agreements which extend beyond said termination date. It is the intention of the parties that this Agreement shall transfer no permanent rights to title, ownership, or control of any Federal or State land, water, facilities, or equipment included in this document.

21. This Agreement and all documents referred to herein, may be amended in the future by mutual consent or agreement of the Executive Director of TPWD, Regional Director of FWS, and GLO Commissioner. In effecting any such amendment, FWS shall comply with the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4331 *et seq.*). FWS shall provide 30 days public notice prior to the effective date of any amendment to this Agreement.

22. This Agreement is entered into for a period of one hundred (100) years, commencing on the date it is fully executed.

In witness whereof, the parties have executed this Agreement on the day, month, and year opposite their signatures thereto:

December 8, 1982.

THE UNITED STATES OF AMERICA, DEPARTMENT OF THE INTERIOR:

JAMES G. WATT,
Secretary of the Interior.

ROBERT A. JANTZEN,
Director, U.S. Fish and Wildlife Service.

AND THE STATE OF TEXAS:

WILLIAM P. CLEMENTS, JR.,
Governor, State of Texas.

BOB ARMSTRONG,
Commissioner, General Land Offie, and Chairman, School Land Board.

PERRY R. BESS,
Chairman, Texas Parks and Wildlife Commission.

Attachments.

UNITED STATES OF AMERICA, DEPARTMENT OF THE INTERIOR, U.S. FISH AND WILDLIFE SERVICE—GRANT OF EASEMENT TO STATE OF TEXAS, MATAGORDA ISLAND, CALHOUN COUNTY, TEXAS

This indenture, made this 8th day of December, 1982, by and between the United States of America, acting by and through the Secretary of the Interior and the Director of the U.S. Fish and Wildlife Service (FWS), or their authorized representatives, hereinafter styled "United States," and the State of Texas, acting by and through the Governor of the State of Texas, the Commissioner of the Texas General Land Office (GLO), on behalf of the Public Free School Fund, pursuant to V.T.C.A. Article 5421c–13, and the Chairman of the Texas Parks and Wildlife Commission, acting pursuant to his authority to direct the policy of the Texas Parks and Wildlife Department (TPWD), hereinafter styled "Texas."

WITNESSETH:

Whereas, the United States and Texas desire to exchange easements on the 19,000± acres of Federal land, including the 6.9-acre Port O'Connor dock annex, and 24,893± acres of State land on Matagorda Island in order to promote and enhance the conservation of wildlife, and continue to provide recreational opportunities for the public which are compatible, and do not interfere, with the primary purposes for which the lands are included in the National Wildlife Refuge System (NWRS);

Whereas, the Secretary of the Interior, acting through the Director of FWS(in the administration of the NWRS, is authorized, pursuant to section 4(b)(3) of Public Law 89–669, as amended (16 U.S.C. 668dd(b)(3)), to acquire lands or interests therein suitable for wildlife conservation and inclusion in the NWRS by exchange for lands or interests therein which are suitable for disposition, when the values of the lands or interests therein exchange are approximately equal;

Whereas, Texas is authorized, pursuant to V.T.C.A. Article 5421c–13, to trade fee and lesser interests in Public School Land for fee and lesser interests in lands of unique biological, geological, cultural, or recreational value;

Whereas, GLO desires to lease the Federal easement and the State lands to TPWD to provide integrated management of Matagorda Island;

Whereas, Matagorda Island is of particular value in carrying out the Nation's migratory bird management program, and for other wildlife conservation purposes, and that such programs and purposes would be aided by the integrated management of Matagorda Island;

Whereas, the interest in Federal lands described below has been found to be suitable for disposition; and

Whereas, the interest in Federal lands described below has been found to be approximately equal in value to the interest in State lands conveyed to the United States by concurrent Grant of Easement.

1. Now therefore, for and in consideration of the concurrent conveyance by Texas of an easement for 100 years to the United States in the land and water surrounding Matagorda Island described in part 1 of "Exhibit A" (attached here to and made a part of this indenture), the United States hereby grants and conveys unto Texas, its successors, and assigns, subject to the terms and conditions of the memorandum of agreement between the United States and Texas executed on the 8th day of December, 1982 (attached hereto and made a part of this indenture, hereinafter styled "agreement"), and the conditions and provisions hereinafter set forth, an easement for 100 years to enter and manage the land and water described in part 2 of "Exhibit A," pursuant to, and for the purpose of implementing, the agreement, including the right of access thereto by authorized representatives of Texas over all land and water described in part 2 of "Exhibit A."

2. Subject, however, to: the United States' express reservation and retention of all interests in the land and water described in part 2 of "Exhibit A," not expressly granted herein, including, but not limited to, all existing rights-of-way, all outstanding mineral rights, other valid existing rights of Texas and the United States, and third parties under patents of record, and rights of third parties under oil and gas leases or other valid existing rights of record.

3. The conveyance hereunder shall be effective on the date of execution of: (a) this Grant of Easement by the Secretary of the Interior and the Director of FWS, or their authorized representatives; and (b) the concurrent Grant of Easement from Texas to the United States.

4. Texas, for itself and for its successors, assigns, lessees, and any other person claiming under them, covenants and agrees that it will cooperate in the management of the land and water described in parts 1 and 2 of "Exhibit A" as wildlife habitat pursuant to the terms of this Easement, including the Agreement.

5. It is understood and agreed by both parties that this Easement grants no rights and imposes no limitations or restrictions upon Texas or the United States other than those set out herein.

6. In the event that the Agreement shall be terminated pursuant to paragraph 18 thereof, then all rights, titles, estates, and interests of Texas, its successors, and assigns, conveyed by this Indenture shall automatically and without entry, demand, or action, terminate and be of no further effect.

7. Should Texas' rights, titles, estates, and interests terminate pursuant to the foregoing provision, then the United States' rights, titles, estates, and interests in the Easement conveyed to it by Texas shall automatically and without entry, demand, or action, terminate and be of no further effect.

THE UNITED STATES OF AMERICA:

JAMES G. WATT,
Secretary of the Interior.
ROBERT A. JANTZEN,
Director, Fish and Wildlife Service.

ACKNOWLEDGMENT

District of Columbia:

This instrument was acknowledged before me on ——— ———, 1982, by James G. Watt, as Secretary of the Interior, and Robert A. Jantzen, as Director of the U.S. Fish and Wildlife Service.

JEAN C. ECKERT,
Notary Public.

My commission expires ——— ———.

THE STATE OF TEXAS,
County of Travis, ss:

Know all men by these presents:

This instrument was acknowledged before me on the 8th day of December, 1982, by William P. Clements, Jr., as Governor of the State of Texas.

SPENCER L. REID,
Notary Public in and for The State of Texas.

My commission expires February 10, 1986.

THE STATE OF TEXAS,
County of Travis, ss:

Know all men by these presents:

This instrument was acknowledged before me on the 8th day of December, 1982, by Bob Armstrong, as Commissioner of the General Land Office, and as Chairman of the School Land Board.

SPENCER L. REID,
Notary Public in and for The State of Texas.

My commission expires February 10, 1986.

THE STATE OF TEXAS,
County of Travis, ss:

Know all men by these presents:

This instrument was acknowledged before me on the 8th day of December, 1982, by Perry R. Bass, as Chairman of the Texas Parks and Wildlife Commission.

SPENCER L. REID,
Notary Public in and for The State of Texas.

My commission expires February 10, 1986.

STATE OF TEXAS, GENERAL LAND OFFICE—GRANT OF EASEMENT TO UNITED STATES OF AMERICA, MATAGORDA ISLAND, CALHOUN COUNTY, TEXAS

This Indenture, made this 8th day of December, 1982, by and between the State of Texas, acting by and through the Governor of the State of Texas, the Commissioner of the Texas General Land Office (GLO), on behalf of the Public Free School Fund, pursuant to V.T.C.A. Article 5421c–13, and the Chairman of the Texas Parks and Wildlife Commission, acting pursuant to his authority to direct the policy of the Texas Parks and Wildlife Department (TPWD), hereinafter styled "Texas," and the United States of America, acting by and through the Secretary of the Interior and the Director of the U.S. Fish and Wildlife Service (FWS), or their authorized representatives, hereinafter styled "United States."

WITNESSETH

Whereas, some 24,893± acres of land and water managed by Texas on behalf of the Public Free School Fund in the vicinity of Matagorda Island in Calhoun County, Texas (as described in part 1 of "Exhibit A" attached hereto and made a part of this Indenture), is suitable for wildlife conservation and National Wildlife Refuge System (NWRS) purposes;

Whereas, the Secretary of the Interior, acting through the Director of FWS, in the administration of the NWRS, is authorized, pursuant to section 4(b)(3) of Public Law 89–669, as amended (16 U.S.C. 668dd(b)(3)), to acquire lands or interests therein suitable for wildlife conservation and inclusion in the NWRS by exchange for lands or interests therein which are suitable for disposition, when the values of the lands or interests therein exchanged are approximately equal;

Whereas, Texas is authorized pursuant, to V.T.C.A. Article 5421c–13, to trade fee and lesser interests in Public School Land for fee and lesser interests in lands of unique biological, geological, cultural, or recreational value;

Whereas, Texas and the United States desire to exchange easements on the 19,000± acres of Federal land, including the 6.9-acre Port O'Connor dock annex, and 24,893± acres of State land on Matagorda Island in order to promote and enhance the conservation of wildlife, and continue to provide recreational opportunities for the public which are compatible, and do not interfere, with the primary purposes for which the lands are included in the NWRS;

Whereas, GLO desires to lease the Federal easement and the State lands to TPWD to provide integrated management of Matagorda Island; and

Whereas, Matagorda Island is of particular value in carrying out the Nation's migratory bird management program, and for other

wildlife conservation purposes, and that such programs and purposes would be aided by the integrated management of Matagorda Island.

1. Now therefore, for and in consideration of the concurrent conveyance by the United States of an Easement for 100 years to enter and manage the land and water described in part 2 of "Exhibit A," Texas hereby grants and conveys to the United States, its successors, and assigns, subject to the terms and conditions of the memorandum of agreement between the United States and Texas executed on the 8th day of December, 1982 (attached hereto and made a part of this Indenture, hereinafter styled "Agreement"), and the conditions and provisions hereinafter set forth, an Easement for 100 years for the conservation of the land and water described in part 1 of "Exhibit A," for inclusion in the NWRS, including the right of access thereto by authorized representatives of FWS and across any and all adjoining lands of Texas.

2. Subject, however, to: Texas' express reservation and retention of all interests in the land and water described in part 1 of "Exhibit A," not expressly granted herein, including, but not limited to, all existing rights-of-way, all outstanding mineral rights, other valid existing rights of Texas and the United States, and third parties under patents of record, and rights of third parties under oil and gas leases or other valid existing rights of record.

3. The conveyance hereunder shall be effective on the date of execution of: (a) this Grant of Easement by the Governor, the Commissioner of the General Land Office, and the Chairman of the Texas Parks and Wildlife Commission, or their authorized representatives; and (b) the concurrent Grant of Easement from the United States to Texas.

4. Texas, for itself and for its successors, assigns, lessees, and any other person claiming under them, covenants and agrees that it will cooperate in the management of the land and water described in parts 1 and 2 of "Exhibit A" as wildlife habitat pursuant to the terms of this Easement, including the Agreement.

5. It is understood and agreed by both parties that this Easement grants no rights and imposes no limitations or restrictions upon Texas or the United States other than those set out herein, including "Exhibit B" attached hereto and made a part of this Indenture.

6. In the event the Agreement shall be terminated pursuant to paragraph 18 thereof, then all rights, titles, estates, and interests of the United States, its successors, and assign, conveyed by this Indenture shall automatically and without entry, demand, or action, terminate and be of no further effect.

7. Should the United States' rights, titles, estates, and interests terminate pursuant to the foregoing provision, then Texas' rights, titles, estates, and interests in the Easement conveyed to it by the

United States shall automatically and without entry demand, or action, terminate and be of no further effect.

THE STATE OF TEXAS:

WILLIAM P. CLEMENTS,
Governor, State of Texas.

BOB ARMSTRONG,
Commissioner, General Land Office, and Chairman, School Land Board.

PERRY R. BASS,
Chairman, Texas Parks and Wildlife Commission.

THE STATE OF TEXAS,
County of Travis, ss:

Know all men by these presents:

This instrument was acknowledged before me on the 8th day of December, 1982, by William P. Clements, Jr., as Governor of the State of Texas.

SPENCER L. REID,
Notary Public in and for The State of Texas.

My commission expires February 10, 1986.

THE STATE OF TEXAS,
County of Travis, ss:

Know all men by these presents:

This instrument was acknowledged before me on the 8th day of December, 1982, by Bob Armstrong, as Commissioner of the General Land Office, and as Chairman of the School Land Board.

SPENCER L. REID,
Notary Public in and for The State of Texas.

My commission expires February 10, 1986.

THE STATE OF TEXAS,
County of Travis, ss:

Know all men by these presents:

This instrument was acknowledged before me on the 8th day of December, 1982, by Perry R. Bass, as Chairman of the Texas Parks and Wildlife Commission.

SPENCER L. REID,
Notary Public in and for The State of Texas.

My commission expires February 10, 1986.

EXHIBIT B

Grant of Easement by Texas to United States—Terms and Conditions of Easement to the United States of America

Attached to and made a part of that certain Grant of Easement from Texas to the United States, dated the 8th day of December, 1982.

Now therefore Texas hereby agrees that it shall comply with the terms and conditions of the Agreement, and it shall not, except as authorized by that Agreement:

1. Manipulate the land and water or allow the manipulation of the land and water by others in any way that would diminish its value as wildlife habitat without the express written concurrence of the Secretary of the interior through the Director of FWS, or his designee;

2. Grant additional easements, rights-of-way, or other interests other than for the development of or exploration for oil, gas, or other minerals pursuant to paragraphs 7 and 8 of the Agreement, in the aforesaid land and water without the express written concurrence of the Secretary of the Interior or his designee;

3. Erect or permit the erection of any buildings, structures, or other appurtenances, other than for the development of or exploration for oil, gas, or other minerals pursuant to Paragraphs 7 and 8 of the Agreement, including a causeway to any portion of the land and water covered by this Easement, for any purpose;

4. Drain or permit the drainage by any means of any wetlands presently occurring or recurring due to natural causes; or

5. Conduct or authorize the conduct of any recreational activities which interfere with and are not compatible with the primary purposes for which the lands are included in the NWRS.

○